IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 355 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

THAKKER SEVANTILAL AMRATLAL

Versus

VIJAYKUMAR CHANDULAL PANCHIWALA @ PANCHICHHALA

Appearance:

MRS JYOTSNA K PATEL for Petitioner No. 1

MR ANSHIN H DESAI for Respondent No. 1

MR LK POOJARI APP for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 20/12/2001

ORAL JUDGEMENT

Heard the learned advocates.

This Revision under Section 397 read with Section

401 CrPC is preferred against the judgment and order dated 21st July, 2001 passed by the learned Addl. Sessions Judge, Deesa in Criminal Revision Application No. 9 of 2001. The revision application arises from an application for possession of the muddamal articles, pending trial under Sec. 451 CrPC.

The petitioner herein lodged a complaint in the Deesa Police Station that on 7th May, 2001, he had sold the muddamal articles [i.e, certain agricultural produce] to one Amardeep Enterprise; a commission agent having its Office/Shop at Deesa Market Yard, of the quantity mentioned in the complaint. The muddamal goods were sent to the said Amardeep Enterprise on 7th May, 2001. Upon inquiry with the Amardeep Enterprises on 8th May, 2001, the petitioner was informed that on 7th May, 2001, the shop was closed and goods were not received. Pending further inquiry with the carrier, it was learnt that the goods were unloaded by the carrier in the open shed belonging to Amardeep Enterprise. From the said shed, the accused - one Dineshbhai Bhaichand had taken away the muddamal goods and sold it off to the respondent no. 1 for a sum of Rs. 9,000/=. The prosecution has, therefore, been lodged against the said accused in the Court of learned Judicial Magistrate, First Class, Deesa. Both - the petitioner and the respondent no. 1 made applications for possession of the muddamal, pending trial under Section 451 CrPC.

The learned Magistrate by his judgment and order dated 8th June, 2001 was pleased to direct the muddamal to be handed over to the present petitioner on his executing a bond in the sum of Rs. 15,000/= on condition that the petitioner shall produce the muddamal goods as and when ordered by the Court. Feeling aggrieved, the respondent no. 1 preferred above Criminal Revision Application No. 9 of 2001 before the learned Addl. Sessions Judge which was allowed by the learned Judge on 21st July, 2001. Feeling aggrieved, the petitioner has preferred the present petition.

It is an admitted fact that the respondent no. 1 had purchased the muddamal goods for a sum of Rs. 9,000/= from the accused Dineshbhai Bhaichand. Even the accused Dineshbhai Bhaichand has not claimed ownership thereof. While the petitioner has claimed the ownership of the muddamal goods. In the circumstances, I am of the view that the petitioner is entitled to have custody of the muddamal goods, pending trial under Section 451 CrPC. Further, the goods being perishable, the petitioner should be allowed to dispose off the same.

In above view of the matter, the Revision Application is allowed. The impugned judgment and order dated 21st July, 2001 passed by the learned Addl. Sessions Judge, Deesa in Criminal Revision Application No. 9 of 2001 is quashed and set-aside. Pending the trial, the petitioner be handed over custody of the muddamal goods on his depositing a sum of Rs. 10,000/= in the trial Court. The petitioner shall be at liberty to dispose of the muddamal goods. The petitioner shall, however, submit the report of the disposal of the muddamal goods and the amount of sale proceeds received by him before the trial Court. Rule is made absolute in the above terms.

[Ms. R.M Doshit, J.]

Prakash*